

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

The Complaint proposed a civil penalty of Twenty Two Thousand Dollars (\$22,000) for these alleged violations. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order is the result of such negotiations, and fully and finally resolve the allegations contained in the Complaint.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondents admit the jurisdictional allegations of the Complaint, and neither admit nor deny the factual allegations of the Complaint.
2. Respondents waive their right to contest the allegations of the Complaint and their right to appeal the Final Order accompanying this Consent Agreement.
3. Respondents and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.
4. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, they are presently in compliance with all requirements of 40 C.F.R. part 745, subpart F.
5. Although not required by TSCA, or any other federal, state, or local law, in settlement of this matter, Respondents agree to conduct a lead abatement project on one of the residential properties that is the subject of the Complaint, the duplex property located at 312-14 32nd Street N.E., in Cedar Rapids, Iowa. The goal of the project is to reduce the possibility of future occupants being exposed to lead-based paint. As part of the work performed on the property, Respondents shall, at a minimum: replace all windows and frames with new double-hung vinyl replacement windows and frames (except those in the garage); install new storm doors on all exterior doorways; and install vinyl and/or aluminum siding on all exterior walls. Respondents agree to obtain prior written approval from EPA if Respondents decide to modify the project in such a manner that the above description of work would not be satisfied. Respondents agree that the abatement project shall only be performed by professionals certified by the State of Iowa to perform lead-based paint activities, as that term is defined in 40 C.F.R. § 745.223. Respondents

agree to follow all applicable state and federal laws when performing this abatement project.

Respondents agree that the abatement project shall be completed within one hundred eighty (180) days of the effective date of this Consent Agreement and Final Order. Within fourteen (14) days of completion of the abatement project, Respondents agree to provide EPA with a notarized statement indicating that the abatement project has been completed, along with an accounting of expenses incurred on the project. Respondents agree to include in the accounting statement a statement certifying that the expenses incurred and listed in the accounting statement are accurate and represent only those expenses for the abatement project. Respondents agree not to claim this abatement project as a business expense on their federal, state, or local income tax returns and agree not to depreciate the costs on their tax returns.

6. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a mitigated civil penalty in the amount of Three Thousand Eight Hundred and Fifty Dollars (\$3,850), to be paid within thirty (30) days of the effective date of the Final Order. Furthermore, Respondents consent to the stipulated penalty provision contained in Paragraph 2 of the Final Order.

7. Respondents understand that their failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 6 above, or any stipulated penalties assessed pursuant to Paragraph 2 of the Final Order, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (six percent (6%) per annum for the period January 1, 2001 through December 31, 2001) on the unpaid balance until such civil penalty and/or stipulated penalty and any accrued interest

are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondents shall undertake and complete the abatement project as set forth in Paragraph 5 of the Consent Agreement.
2. In the event that Respondents fail to undertake or complete the abatement project as set forth in Paragraph 5 of the Consent Agreement, Respondents shall pay a stipulated penalty in the amount of Eleven Thousand Five Hundred and Fifty Dollars (\$11,550). Such stipulated penalty shall become immediately due and payable within thirty (30) days of the scheduled completion date of the abatement project, which is set forth in Paragraph 5 of the Consent Agreement.
3. Respondents shall pay a mitigated civil penalty of Three Thousand Eight Hundred and Fifty Dollars (\$3,850) within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondents by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.
4. A copy of the check must simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region VII
901 N. 5th Street
Kansas City, Kansas 66101.

5. A second copy of the check and the submittals required by Paragraph 5 of the Consent Agreement, shall be forwarded to:

Mike Gieryic
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

6. Respondents and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT
KELLEY PROPERTIES, INC.

Date: 4-17-2002

By: Ronald L. Kelley

Title: President

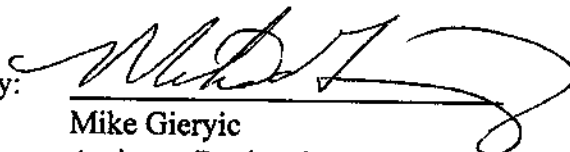
RESPONDENT
RONALD L. KELLEY

Date: 4-17-2002

By: Ronald L. Kelley


COMPLAINANT
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/25/02

By: 
Mike Gieryic
Assistant Regional Counsel
EPA, Region 7

IT IS SO ORDERED. This Order shall become effective immediately.

Date: April 25, 2002


ROBERT L. PATRICK
Regional Judicial Officer
EPA, Region 7

IN THE MATTER OF Kelley Properties, Inc.; and Ronald L. Kelley, Respondent
Docket No. TSCA-07-2002-0072

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Michael Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Ronald L. Kelley, Esq.
Registered Agent for Kelley Properties, Inc.
2750 First Avenue, NE, Suite 240
Cedar Rapids, Iowa 52402

and


Copy by First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
401 M Street, S.W./Mail Code 1900L
Washington, D. C. 20460

and

The Honorable Carl C. Charneski
Administrative Law Judge
U. S. Environmental Protection Agency
401 M Street, S.W./Mail Code 1900L
Washington, D. C. 20460

Dated: 4/26/02


Kathy Robinson
Regional Hearing Clerk